No. 14-0272

IN THE

The Supreme Court of Texas

SEABRIGHT INSURANCE COMPANY,
Petitioner,
v.
MAXIMA LOPEZ, BENEFICIARY OF CANDELARIO LOPEZ, DECEASED,
Respondent.

Appealed from the Fourth Court of Appeals, Case No. 04-12-00863-CV
and
229TH Judicial District Court of Starr County, Texas
Trial Court No. DC-08-484
Ana Lisa Garza, Presiding Judge

REPLY IN SUPPORT OF PETITION FOR REVIEW

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I. REPLY POINTS

The Response in Opposition to Petition for Review filed by Maxima Lopez, the Respondent, only highlights that under the test set forth by the Fourth Court of Appeals a workers' compensation carrier faces certain liability for any employee traveling in an employer provided vehicle. Lopez should be treated as an employee driving to work at the time of the accident, not as an employee traveling out of town or on a special mission.

A. Lopez was not on a required out of town trip at the time of his employment.

Respondent argues that Lopez's drive to work both originates in the business of his employer and is subject to continuous coverage because he was staying "away from home" (Rio Grande City). Response in Opposition to Petition for Review, p. 27. Respondent argues that Lopez would not have been traveling "but for" his work and that he did not "wake up in his home on the morning of the fatal accident and drive to work." *Id*. at 21. Under this flawed reasoning, Lopez's acceptance of a job away from his hometown of Rio Grande City made all of his employment out of town work. Pursuant to Respondent's argument, any employee who takes a job away from home would be in the course and scope of employment traveling to work. But this is not the standard under Texas law. Rather, Lopez regularly chose to accept employment at premises away from his hometown.

During Lopez's entire employment with Interstate Treating, Inc. he had never worked in the vicinity of Rio Grande City, Texas. CR-742. If an employee chooses to take a job in another city, then that city becomes the premises for determining whether an employee is traveling for work. *Shelton v. Standard Ins. Co.*, 389 S.W.2d 290, 293 (Tex. 1965).

In *Shelton* the Texas Supreme Court established that whether an employee is traveling for work is viewed from whether "work entails travel away from the employer's premises." *Id.* An injury that occurs on an employee's drive to work will always be causally related to employment, but that is not determinate of course and scope. Respondent repeatedly highlights that "but for" Lopez's job he would not have been driving that morning. That "but for" analysis is true for every employee driving to work every day. If that is the standard to be used in the evaluation of the course and scope of employment travel cases then all employees will fall within the course and scope of employment.

Respondent asks the Court to evaluate this case as if Lopez was on an out of town work assignment from Rio Grande City. Respondent compares this case to *Shelton* where the employee was driving from Abilene, Texas to Wichita, Kansas as the employer relocated the business. *Id*. at 291-92. This case is not like *Shelton*. Respondent acknowledges that Lopez was away from Rio Grande City for his *entire* employment. That is not a work trip. Lopez's place of employment at the

time of the accident was at the Encana Plant in Ridge, Texas. CR-740. Lopez was not on a work trip away from the Plant. He was not traveling away from the premises of his employer when the accident occurred. He was merely on his way to work in the morning.

There was no travel away from the premises of the employer as part of Lopez's employment on the day of the accident. The continuous coverage rule generally provides that workers are continuously in the course and scope of their employment during an out of town trip. *Aetna Cas. & Sur. Co. v. Orgon*, 721 S.W.2d 572, 574-75 (Tex. App.—Austin 1986, writ. ref'd n.r.e.). As Lopez was not on a work trip the continuous coverage rule does not apply. The Fourth Court of Appeals acknowledged that continuous coverage does not apply pursuant to *Orgon* and *Shelton*, yet still evaluated the facts from the perspective that Lopez was traveling out of town for work. *SeaBright Ins. Co. v. Lopez*, 2014 Tex. App. Lexis 905, *13, n. 2 (Tex. App.—San Antonio 2014, pet. filed) citing *Orgon*, 721 S.W.2d at 575 and *Shelton*, 389 S.W.2d at 293. Similarly, Lopez was not engaged in any required travel away from his work premises as part of his employment. As such, Lopez's drive to work is not travel that would originate in the business of the employee.

B. Lopez was not on a special mission during his drive to work.

Respondent finally argues that Lopez was on a special mission during his drive to work when the accident occurred. Respondent ignores and does not address the Texas Supreme Court's holding in *Evans v. Illinois Employers Ins.* that "travel to work" is not a special mission. 790 S.W.2d 302, 304 (Tex. 1990). Respondent also does not identify what special mission Lopez was on at the time of the accident and does not identify any summary judgment evidence from the record setting forth any special mission given to Lopez by his employer. Rather, Respondent merely reargues that Lopez was traveling out of town for work and in transportation paid for by his employer. However, this does not set forth a special mission. Respondent is attempting to conflate the continuous coverage rule with the special mission rule. However, as Lopez was not traveling away from his employer's premises on a work trip he also was not engaged in a special mission away from his employer's premises. As in *American Home Assurance Co. v. De Los Santos*, Lopez "was traveling on his customary route to his regular worksite." 2012 Tex. App. 7891, 15 (Tex. App.—San Antonio 2012, pet. denied).

Under Respondent's analysis Lopez's entire employment would have been a special mission as his entire employment was away from Rio Grande City. Viewing the drive Lopez made every day to work as a "special mission" completely defeats the concept that a special mission excludes travel to work.

IV. PRAYER

SeaBright Insurance Company respectfully requests the Court reverse the judgment of the Court of Appeals, render judgment for SeaBright Insurance Company, and for all other relief to which SeaBright may be entitled.

Respectfully submitted,

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CERTIFICATE OF SERVICE

A true and correct copy of this document has been forwarded via facsimile and via email to all counsel of record on July 22, 2014, as follows:

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CERTIFICATE OF COMPLIANCE

I certify that as counsel for Petitioner that the number of words in this document is 1,253 as calculated by Microsoft Word.

/s/ Joy M. Brennan_____